

# On Some of the Moral Limits Regarding Strategic Attack

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## *Abstract*

On Some of the Moral Limits Regarding Strategic Attack. In this paper, I will argue that the employment of the current doctrine regarding strategic attack is morally deficient when it gives priority to force protection over noncombatant immunity. My contention is that the use of aerospace power in a strategic attack capacity cannot require less moral stringency or less moral forethought than the use of force by troops on the ground. Any apparent disparity results not from difference in kind between air power and other force, but from a vagueness regarding the means of justification, the Doctrine of Double Effect, which is then exploited in the way Double Effect is employed. Deaths caused by such action are not in fact always unintended but are sometimes foreseen and accepted to obtain some military end under the guise of necessity and proportionality. However, such actions are incompatible with the notion of integrity, a core professional value, because one's intent must also be good. Hence, breaking the will of an enemy through strategic attack has no more moral legitimacy than terrorism if it capitalizes on the innocent.

## **I. Introduction**

US Military operations in the post-Cold War era have been punctuated by a twofold desire for casualty avoidance. The first manifestation of this desire is a longstanding feature associated with the conduct of war: the preservation of friendly forces. The success of Operation Desert Storm proved that heavy casualties on one's own forces are not requisite for military victory, and not surprisingly, indirectly promoted force protection as paramount in subsequent operations. In contrast, the other manifestation of casualty avoidance is the reduction of noncombatant losses. Of course, the term encompasses noncombatants from both one's own country as well as those residing in or belonging to the enemy state. Although the idea of noncombatant immunity has a lengthy history traceable through the earliest warrior codes, the reduction of noncombatant casualties, particularly those of the enemy, has consistently been overshadowed by claims of military necessity. Arguably, the rise of the modern media, virtually omnipresent, might be credited with helping to renew interest in the protection of noncombatants since no aspect of conflict now escapes international scrutiny.

Complicating matters is the military's current focus on effects-based targeting and operations perhaps epitomized in the Air Force's doctrine regarding strategic attack. Rather than engaging enemy forces directly, current doctrine holds that strategic attack is used to destroy the enemy's centers of gravity (COGs), i.e. "those characteristics, capabilities, or localities from which a military force derives its freedom of action, physical strength, or will to fight."<sup>1</sup> The idea is usually attributed to the initial architect of the Gulf War's air campaign

Colonel John Warden, who proposed the existence of five rings or COGs, the most important being leadership, followed by organic essentials, infrastructure, population and finally the actual fighting mechanism, which is the least important.<sup>2</sup> However, the COG concept is certainly reminiscent of Sun Tzu's dicta purporting that the acme of skill is to subdue the enemy without fighting since capturing forces is preferable to fighting. Hence, attacking the enemy's strategy, not troops, is ultimately what ensures success.<sup>3</sup> However, the nature of COGs has an inherent opacity regarding the combatant/noncombatant distinction (exempting of course Warden's last COG). Soldiers and civilians are now inextricably woven together in an amorphous battle space—the age of segregated battlefields has all but vanished.

The obvious problem is which notion, force protection or noncombatant immunity, ought to have priority and to what extent. Intuition, as well as the current *modus operandi* of the military, might suggest that it is more important for the military leader to preserve the lives of his soldiers even at the cost of greatly increasing the risk to noncombatants, especially when the noncombatant lives in question are not US citizens or allies but rather belong to the enemy state. After all, the prevailing view is that American lives are somehow more important. However, I will argue that such a notion is misguided. A military commander is morally obligated to do as much as he can to preserve the lives of all noncombatants even if significantly increasing the risk to his own soldiers. This does not necessitate fighting a war devoid of noncombatant casualties—that may well be virtually impossible—nor does it entail winning to be unachievable. Wars can still be fought and won; however, the moral import of noncombatant immunity demands a shift in the current conception of force protection, and I will suggest what such a shift entails.

## **II. Force Protection**

That commanders have a legal duty to protect and ensure the health and welfare of their subordinates during peacetime as well as wartime is incontrovertible. Whether that duty is a moral one is a slightly more open question. Of interest here is not an evaluation of the any number of plausible arguments that might support such a claim but the stringency of the moral requirement given that it does exist. This stringency rests upon the resolution of an apparent tension of what has priority for the commander: his mission or his people. Vacuous aphorisms, such as “mission first, people always,” proffered throughout the military, offer no council, and instead, the answer lies in the analysis of soldiers and their rights.

Soldiers serve in the military fully knowing their lives can be subject to greater risk than their fellow citizens, which might seem obvious in a time of war. However even in peacetime, training with any semblance of realism can and unfortunately sometimes does result in harm for those involved. What is significant though is that with the onset of hostilities, soldiers become combatants and are thus imbued with a fundamentally different moral status than noncombatants. The reason for the difference involves an exchange of rights between combatants—namely the rights to kill and to be killed.

Soldiers, on both sides of a war, are willing to fight and die for the defense of what they consider essential values worthy of such import. An immediate objection might be raised contending that soldiers actually are motivated into action by a whole host of reasons such as pride, vanity, hate or fellow feeling, but not necessarily the defense of national values. While indeed true, these interests might be considered immediate or first order. Most



combatants, perhaps mercenaries aside, also have a deeper second order interest at stake, which corresponds to the defense of values previously mentioned. For US soldiers, these values include those of the liberal democratic tradition such as life and liberty. When states decide to enter into hostilities in defense of their respective values, service members operate on a good faith principle regarding their country's intentions, namely that the intent *is* the defense of the values. In other words, the moral responsibility of engaging in war is a *jus ad bellum* issue resting squarely with the political authorities of the state—be they authoritarian or democratic in nature—and not on the soldiers prosecuting it. I am not advocating a *carte blanche* appeal to invincible ignorance but instead assume that in *most* cases and especially early on, the state's actual reasons for war might be inaccessible to the soldier.<sup>4</sup> Hence, soldiers as a general class can be considered in the absence of *jus ad bellum* concerns.

So though combatants do not choose the wars involving their states, they do fight in them against what indeed constitutes a legitimate threat to the preservation of their values—the enemy combatants—while fully knowing that the enemy's actions and beliefs mirror their own differing only with regard to particulars. Because they have this shared epistemological insight, combatants also share the moral responsibility for posing an imminent threat to one another. Assuming that combatants have no other recourse but fighting to protect these values when threatened as such, combatants are not only allowed, but in fact, are morally obligated to use force.<sup>5</sup> Thus, combatants on both sides of a war enjoy moral equivalency since they share the same moral obligation—the defense of their nation's values.

It follows then that combatants are not considered criminals for fighting in a war, even if they are fighting for the “wrong side,” since they are not responsible for the *jus ad bellum* decision.<sup>6</sup> Soldiers need concern themselves primarily with adherence to the tenets of

*jus in bello*, so that in fighting the good fight, they cannot be considered murderers or morally reprehensible for killing in combat. For instance, assume that Iraq was unjust by instigating the Gulf War. While Saddam Hussein might be considered morally responsible and blameworthy for the conflict as the state's political leader, Iraqi soldiers, including those who killed U.S. and coalition soldiers, are not automatically guilty of a crime or moral transgression. To dissent and consider soldiers fighting for the "wrong side" as murderers is grossly counterintuitive and ultimately untenable upon any reflection whatsoever.<sup>7</sup>

It might seem that the discussion of a soldier gaining "combatant rights" (like the right to kill other combatants) speaks past the commander's moral obligation to protect his force. However, it has immediate relevance because obtaining combatant rights necessitates the commensurate reduction in the stringency of the combatant's right to life. In other words, he no longer has a stringent claim that he not be killed. After all, combatants have the right to kill their foe, but their foes concurrently have the right to kill them. Thus, these two rights are mutually dependent.

The loss of stringency regarding the combatant's right to life also entails that a combatant is not safeguarded by an absolute prohibition against a commander's decision to jeopardize his life for mission accomplishment. It certainly might be the case that training missions or missions in conflicts concerning non-vital national interests are not worth sacrificing soldiers' lives. However, when the vital interests of a nation are jeopardized making a war worth engaging in, the mission of preserving these national interests and associated values must logically trump any claim combatants may have regarding their personal safety. Soldiers, especially in the case of the all volunteer military of the United States, realize this and realize that the sacrifice of their lives might be required—else they

would not be willing to risk their lives and become combatants.

My argument restricts itself to the placement of soldiers in peril by commanders with good intent—good intent being something comparable to the accomplishment of a mission related to winning the war and ultimately protecting the values at stake. Those who wantonly cause the death of their own soldiers with no aim towards mission success are not worthy of consideration. As such, commanders ought to do as much as morality permits to reduce risk and prevent their soldiers from dying unnecessarily. However, sometimes soldiers will die. Commanders whose decisions result in the loss of the lives of their subordinates, even excessive loss, are not by rule considered immoral but perhaps only ineffective or unfortunate. Furthermore, combatants ordered to perform missions with the gravest danger are not at liberty to refuse based on concerns of self-preservation. Danger is not a mitigating or exempting circumstance. Such actions are punishable offenses as evidenced by Article 99, Misbehavior Before the Enemy, in the *Manual for Courts-Martial United States*.<sup>8</sup> Thus, the commander's duty to ensure that no harm ever comes to his soldiers in combat is of tremendous pragmatic import but fails to establish itself as a stringent moral obligation. Ultimately, mission must come first, and the safety of each individual soldier second.

### III. Noncombatant Immunity

The argument for noncombatant immunity is grounded upon the idea that people possess certain basic rights stemming from their autonomy and moral agency. Exactly what rights belong to this set is debatable but certainly life and liberty are among them if they exist at all. I will limit my discussion to the former, which might be noted, is not a single claim in itself but is rather a cluster-right containing rights, privileges, certain immunities and claims to noninterference.<sup>9</sup> As such, the right to life is inalienable only in the sense that “*others* lack the power to make one cease to have it, and thus for one to have immunity against others in respect of it.”<sup>10</sup>

It follows then that all moral agents possess the inalienable right to life, regardless of whether they are citizens of the United States or the enemy state. However, inalienability with regard to the right to life does not extend to the stronger interpretation of inalienability holding that a person cannot make himself cease to have the right by any means at all.<sup>11</sup> This is not the case since combatants voluntarily give up at least a part of their right to life—the right not to be killed by other combatants—in order to gain the right to kill. In doing so, the combatant’s right to life is no longer stringent. In contrast, noncombatants do not participate in any such exchange, and their right to life remains inalienable and stringent. Given this difference, the noncombatant is not subject to direct attack, being targeted or intentionally harmed by combatants.

Intuition seems to readily support this argument in the consideration of noncombatants considered friendly.<sup>12</sup> US soldiers cannot reasonably believe that they would

have the liberty to kill US civilians during a mission, because such action was militarily “necessary.” After all, their mission is to protect these people, even when only indirectly. Military personnel realize that this is why they are fighting in the first place as evidenced by *Selfless Service* as one of their core professional values.<sup>13</sup>

Unfortunately, intuition is not as trustworthy with regard to noncombatants considered “enemy.” Though these people are not a direct threat to the combatant, their relationship with enemy combatants is seemingly pernicious. However, it is difficult to see how the contingent matter of nationality or spacio-temporal disposition has moral import. It is untenable to hold that US citizens enjoy moral superiority over foreigners simply in virtue of the fact that they are American. Any such presumption of moral superiority is groundless. Noncombatants of all nationalities, friendly or enemy, enjoy the same inalienable right to life, which carries the same stringency regarding noninterference.

Hence, a combatant is obligated to respect the rights of all noncombatants entailing that they are morally obligated to respect the stringency of their right to life and must never intend to harm them or use them solely as a means to an end.<sup>14</sup> This obligation is particularly poignant for US soldiers. The values they fight for are not simply constrained or applicable to their own citizens but are liberal democratic ideals that apply to all people. The Constitution rests on this very premise. So, any war involving the US ultimately centers on the advancement on such ideals; any fight for the US against a state that is not well-ordered is a fight for basic rights—including the right to life—for not only their own citizens but those of the enemy state as well.<sup>15</sup> This is why humanitarian interests are overtly included in the National Security Strategy.<sup>16</sup> Hence, it follows that it is contradictory to then cause harm to the very people whose right to life you are obligated to protect.

Some might object to my claim on the grounds that enemy noncombatants are, after all, the enemy. However, such a notion fails to delineate the moral differences between those who prosecute a war and those who only witness it. This is not to say they bear no responsibility for the war, especially when they have the freedoms to influence such decisions as in the case of a democracy. Even so, this hardly constitutes grounds for the cessation of their noncombatant immunity. They are not the threat and cannot be considered legitimate targets.

I would be remiss to bypass the acknowledgment of the fact that the broad category of noncombatants can and ought to be further sub-divided, since the picture is not as black and white as I have perhaps implied. My comments regarding noncombatants are in fact meant to apply to innocent noncombatants, those with no direct involvement with fighting the war or materially supporting the war effort. Non-innocent noncombatants, on the other hand, are those people who, though not engaged in making war, directly support the war effort, the paradigmatic example being workers at munitions or armament factories. In virtue of their activity, non-innocent noncombatants have a less stringent claim not to be killed though they still cannot be directly targeted. In other words, bombing the munitions factory with the minimal number of workers present is much less controversial than inflicting the same number of casualties on innocents who are not engaged in a war-supporting activity. The non-innocent noncombatants killed increased their own risk by engaging in an enterprise solely designed for the purpose of war.<sup>17</sup> Even so, such fine grain distinctions are not critical to my thesis as I submit that in any modern conflict there will be innocent non-combatants, and it is on them that I wish to focus.<sup>18</sup>

Thus, noncombatants enjoy a more stringent right to life than combatants since they

themselves have not opted to reduce or degrade it in any way, and no one else has that power. Returning to the initial issue of whether a commander must give priority to force protection or to the safety of noncombatants the answer should be obvious. The stringency of the latter trumps the former morally obligating the commander. Ultimately, force protection at the expense of noncombatant safety is immoral and contradictory to the achievement of any legitimate end.

## **IV. The Doctrine of Double Effect and COGs**

The aforementioned argument hardly resolves the issue. Knowing that noncombatant immunity is more important than force protection does not provide a normative framework for the commander attempting to win while waging a moral war. The unfortunate fact is that in war innocent noncombatants will die, and commanders cannot reasonably prevent all such deaths while still fulfilling their moral obligation of protecting national values. For instance, the Normandy invasion would not have been called off, nor does it seem that it should have been, if a final reconnaissance report minutes before the operation identified a bold Frenchman who, to spite the Germans, decided to go fishing on the beach.

Such casualties or similar collateral damage are usually legitimized by an appeal to the Doctrine of Double Effect (DDE), which, if satisfied, purports to provide the moral justification of an action that has simultaneous good and bad consequences. There are various formulations of DDE, but arguably the strongest and most plausible is by Michael Walzer who proposes a version of DDE consisting of four necessary conditions:

- (1) Legitimacy: the act is good in itself—i.e. it is a legitimate act of war.
- (2) Effect: the direct effect is morally acceptable.
- (3) Intent: the intention of the actor is good, that is he aims narrowly at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimize it, accepting costs to himself.
- (4) Proportionality: the good effect is sufficiently good to compensate for allowing the evil effect.<sup>19</sup>

In the case of the unfortunate Frenchman, all tenets are easily satisfied: the attack was a legitimate act of war; it had an acceptable direct effect in that it killed or removed the



German combatants from the area; the intent of the allies was good in that the death of the Frenchman was not used to facilitate mission success; and finally, the good coming from the invasion far outweighed the evil coming from the Frenchman's death. Hence, the action, which killed the French innocent noncombatant, appears to be justified.

Since the efficacy of DDE rests upon the third and fourth tenets, which carry the burden of the argument, I wish to mention some problems with them before relating DDE to the current strategy involving the strategic attack of centers of gravity.<sup>20</sup> Though DDE offers progress over less restrictive measures, the third and fourth tenets are problematically vague. The intentions of a commander are not epistemologically accessible. Furthermore, the requirement to minimize evil and accept costs suffers from the same problem as proportionality, namely subjectivity in the assignment of relative values to military advantage, risk and noncombatant injury.<sup>21</sup> The issue is much like the Sorites paradox; large amounts, in this case of injuries to noncombatants, are easily recognized but no cut-off as to what constitutes a "large amount" seems identifiable.

In difficult cases, like those commonly arising from effects-based targeting against COGs, the benefit of the doubt concerning the vagueness rests with the opinion of the reasonable military commander. Consider the case of degrading an enemy Command, Control and Communications (C<sup>3</sup>) network. In Kosovo, degrading this COG included the strategic bombing and destruction of the RTS, the state run broadcasting corporation in the Federal Republic of Yugoslavia, which resulted in the deaths of 10 to 17 civilians (the Serbians claimed 16).<sup>22 23</sup> Was this justified by DDE? Assuming the first two tenets to be satisfied, one must ask whether this meets intent and proportionality?

With regard to intent, NATO expressed two reasons for the attack. First, the station

was alleged to have a dual use, because it supported radio relay for the FRY military and special police forces. Second, NATO declared that it needed “to strike at the very central nerve system of Milosovic’s regime” and that strikes against targets such as the RTS were “a part of the campaign to dismantle the propaganda machinery which [was] a vital part of President Milosovic’s control mechanism.”<sup>24</sup> Neither reason evidences an overtly evil intent, though the Serbians argued that the act was simply a suppression of free speech and the truth, nor do they suggest that the civilians were used as a means.<sup>25</sup> However, there is some debate as to whether risk was minimized because of the possible inadequacy of warnings about the attack. Furthermore, proportionality is also suspect since the broadcasting at the facility “allegedly recommenced within hours of the strike” obviating any potential gain.<sup>26</sup> NATO responded to these criticisms by arguing that appropriate warnings were given prior to the attack, and regarding proportionality, a C<sup>3</sup> system is a complex web that cannot be disabled by a single strike, which entails that proportionality is to be measured as a totality of effects on the system rather than in terms of each discrete event.<sup>27</sup>

My concern is that such an interpretation of DDE by the reasonable commander apparently justifies this attack and others like it. This supposed justification is strengthened by a similar decision by the UN’s committee charged with reviewing the NATO bombing campaign against the Federal Republic of Yugoslavia. However, consider the following hypothetical scenario—that the same target was destroyed with the same results but by a ground combat unit rather than a missile strike. In such a case, DDE seems far less permissive. After all, the commander would have had many options to reduce risk to the civilians such as clearing the building of its occupants prior to employing his destructive capabilities. Since he did not do this, he failed to satisfy the final demand of the third tenet,

and ends up with an unacceptable ratio of civilian death to gain, which fails the fourth tenet as well.

The fact that the moral judgments differ is rather problematic given the fact that both scenarios have identical missions and identical results. It cannot be the case that the use of aerospace power in a strategic attack capacity somehow requires less moral stringency or less moral forethought than the use of force by troops on the ground. Any such notion is wholly untenable. In actuality, the apparent disparity results not from difference in kind between air power and other force, but from the aforementioned vagueness of DDE, which is then exploited by the way the current doctrine mandating effects-based strategic attack of COGs is employed.

From its inception, strategic attack has been a way to degrade the enemy while reducing risk to the overall force. Aerospace power is the primary means for strategic attack, and it has proved effective and efficient. This is not to say that pilots conducting combat missions do not incur significant risk. They do, and they routinely act with heroism and valor. However, the aerospace force currently enjoys tremendous advantages because of the absolutely dominating technological sophistication involved. Ground forces, on the other hand, lack such a distinct advantage and hence face greater risks—US actions in Somalia speak to this point. For US forces, fighting the ground portion of a campaign is simply more dangerous and riskier for many more soldiers across the force. It would be ludicrous to believe that a ground invasion of Kosovo would have been casualty free if the Serbs had any resistance whatsoever. While air-centric strategic bombing of COGs is effective in breaking the enemy's will, it also is the safest way to wage a war at least with regard to friendly forces.

Though effective and efficient, the use of such strategic attack inevitably involves a moral cost—exposing noncombatants to unnecessary risk and harm. Such a claim raises an immediate objection, namely that during strategic attack noncombatants are exposed to less overall risk and harm since the use of ground forces would ultimately lead to more casualties, which prevents the latter from being the most moral course. The objection is a consequentialist approach based in the contention that the rightness of an action is dependent upon its ability to maximally obtain the good or end.<sup>28</sup> In the case of war, the good seems to be preserving lives, which then relegates the use of ground forces to a less desirable position as a moral option assuming it does indeed result in more casualties. Such consequentialist thinking was clearly evident in NATO's response regarding the issue of proportionality in the RTS bombing.<sup>29</sup>

The consequentialist argument, though, is plagued by a significant problem—it relies on moral luck. In other words, a moral agent's action is justified only in the cases where the outcome does in fact obtain. However, an agent's action will always lack sufficiency to actually bring about the desired end. Moral justification for the consequentialist is always contingent upon factors well beyond the actual span of the agent's control. Admittedly, I am guilty of oversimplifying consequentialism, which in reality has a rather robust philosophic tradition. However, a thorough exploration is not required for my purposes here since none of its variants provide the desired sufficiency regarding action and outcome.

Consider the following example. George sees a man desperately trying to fix a flat tire on his van along the roadside. Feeling helpful, George lends him assistance. The man is soon on his way because of George's aid, and he thanks George noting that he will now be able to make it to a very important engagement that evening. George believes that he has

done a good deed, one worthy of moral praise. Arguably, he has. The next morning, however, George reads in the paper that a man in a van, in fact the man he helped, set off a car bomb the previous night killing 40 people at a function attended by the Mayor and other city officials. Is George's action, previously a morally praiseworthy one, now suddenly bad because of how things turn out?

No, the goodness of George's act does not diminish despite how things turn out. The praiseworthiness of an action is not contingent upon factors beyond an agent's control but instead depends solely upon the agent himself.

If I am correct, then an action's outcome does not entail the legitimacy of the means. Returning to the issue at hand, the fact that a ground option might incur more overall casualties than the use of aerospace power says nothing definitive about its rightness or wrongness. Intent has much more relevance to the rightness of an act than how things actually turned out; morality is concerned with how one ought to act rather than actualities such as what one does or might do given Gyges' ring.<sup>30</sup> Thus, what has to be examined in the consideration of the use of strategic bombing to affect COGs as opposed to a ground force option is not simply proportionality but also intent, which is embodied in the third tenet of DDE.

Current practice acknowledges that attacking targets affecting COGs requires the assessments of the possible collateral damage to be made so as to establish proportionality and hence justification. However, if the resultant collateral damage is to also satisfy the third tenet of DDE, then it must be unintended. The exercise has become a rather litigious one as high-ranking commanders find themselves surrounded not only by strategists, tacticians and intelligence officers but by legal counsel as well. This occurred with the RTS station attack.

Here, NATO contended that it was never the intent to kill the workers or use them as a way of achieving the destruction of the station; hence, the casualties ought to be considered unintended. Assuming the number was not unacceptably high, the act is then deemed proportional, which completes its justification.

I contend that such a move is actually an equivocation of sorts regarding the notion of *unintended* casualties. Unintended implies accidental not simply unfortunate. If a casualty is foreseen as a result of an action, it is difficult to consider that casualty unintended. Good intent is much more than a person uttering a reassuring explanation after the fact—that is why integrity is a virtue. Consider the deaths at Hiroshima. It is difficult to say that these deaths were accidental.<sup>31</sup> They were foreseen, at least a large number of them, even though the people involved were not the actual objective but an unfortunate side effect. Such deaths are often still categorized as unintended by the reasonable commander. However, there is a significant difference for example between planning to destroy a vacant bridge but having a car with innocent noncombatants unexpectedly cross it at the hit time and planning to destroy the same bridge with the knowledge that the same car *will* be on it. Therein lies a problem: foreseen deaths are not in fact unintended but are knowingly caused and accepted to obtain some end. “It is nonsense to pretend that you do not intend to do what is the means you take to your chosen end.”<sup>32</sup>

An objection might be raised contending that the workers in the RTS were actually non-innocent noncombatants if they were in fact engaged in direct military support. Assuming this to be the case, I would concede that the implications of equivocation in this case are diminished since the deaths of non-innocents can be of the foreseeable variety. After all, they have less stringency in their claim not to be attacked because of their chosen

enterprise. Though my attack on the particular example may have been parried, the overall criticism remains: air-centric strategic attack of COGs often has foreseeable effects upon innocent noncombatants. For example, suppose the power grid of a city was targeted. The object of the attack, military related activities powered by the plant, would be affected but so would the everything else drawing power from the source including such things as hospitals, refrigeration, water purification processes and a whole host of others. The effects of such an attack are foreseen and cannot then be imagined to be accidental when they do occur.

When such actions have foreseeable negative effects to innocents, the moral burden falls upon the combatant to ensure that he minimizes them at the cost of increasing the risk to himself and his forces. This is in essence what the third tenet of DDE requires. However, the “minimization” usually manifests itself in the requirement to use precision-guided munitions with smaller effects as opposed to using more indiscriminant and destructive conventional ones. Such a move is hardly sufficient. If the objective is really valuable to the military campaign and the war is really worth winning, then the achievement of the objective must be worth the loss of soldiers’ lives. This does not mean that soldiers have to or even ought to die. What it does mean is that combatants must be the ones bearing the risk of dying rather than the innocent noncombatants. This cannot be accomplished by simply using precision munitions. Though they may reduce damage in contrast to conventional ones, they serve only to reduce risk within the discrete categories of noncombatant and combatant but do nothing to affect the transfer of risk from the former to the latter as morality demands. Such a requirement makes fighting the war much more difficult than the efficient and effective option provided by aerospace power. Combatant’s lives, perhaps many, will be lost, yet to give force protection priority is exactly what cannot be done.

A final analogy might help to clarify and emphasize the above point. Consider terrorism. Its instances are many—the Algerian resistance to French occupation, the Irish Republican Army’s fight against the British and the various groups fighting for Palestinian autonomy—and the successes of these groups speak to its effectiveness. However, terrorism is condemned as immoral because of its indiscriminate nature, which causes foreseeable, innocent noncombatant deaths. In other words, terrorism harms innocents as a direct means to affect its end. Though the cause may be worthy and good, terrorism, as a means, remains unpalatable, because the terrorist attempts to achieve expediency and efficiency by placing his end ahead of his moral responsibility to fight well.

The terrorist’s response would be that his seemingly evil methods, though drastic, are in fact justified, because they are the only ones available in the given situation. However, such a claim is unacceptable. A good cause does not justify any possible method used to achieve it. A murderer is no less of a murderer just because he kills evil people in his attempt to improve society. Even if successful, there ought not be any gain in moral legitimacy—though anomalies do occur like Yasser Arafat who rose from terrorist to Nobel Peace Prize recipient. The fact is that other means are always available. These alternatives will most likely expose the terrorist to a much greater risk and possibly jeopardize his ability to obtain his end, but they are available; terrorism is not the only recourse as he claims. The difficulty is that the terrorist is unwilling to assume risk and instead transfers it to the innocents. Certainly it is easier for the terrorist to destroy a school bus full of children in contrast to attacking a military installation.

Interestingly enough, the moral condemnation that applies to the terrorist differs only in degree, not kind, from the position I have advanced regarding the current practice of



involving foreseeable deaths. The analogy is loose as the terrorist's position is complicated by other factors such as his exploitation of the combatant/noncombatant distinction and failing to meet the *jus ad bellum* requirements for engaging in hostilities in the first place. However, breaking the will of an enemy through strategic attack has no more moral legitimacy than terrorism if it capitalizes on the innocent.

## **IV. Implications**

Fighting justly as contended does not necessitate the end of aerospace power or the use of air-centric strategic attack—though staunch advocates of Douhet and LeMay might disagree. Aerospace power in itself is not immoral and in fact is essential for success in wars and conflicts of the future, which will not be won without the joint employment and application of forces. If the US is to fight these future conflicts justly, morality requires a shift in our current conception and practices regarding force protection.

Politicians and military leaders alike must abandon the zero-casualty mentality and de-emphasize force protection at the cost of increased risk to noncombatants. Friendly casualty estimates are important planning factors, but they ought never to drive policy and strategy; national interests should. The current strategy of shaping the international environment and responding to threats involves a myriad of national interests that must be closely scrutinized to determine which among them are really worth the lives of American soldiers. When a conflict arises over a particular interest that lacks such import, cruise missile strikes, though convenient, are not morally viable if they will harm the innocent. Such policy ought to give way to nonmilitary instruments of power even if less efficient. Of course, the decision to refrain from military force reference a particular issue does not need to be advertised so as not to degrade US diplomatic leverage.

Those interests worth the aforementioned costs obligate leaders and policy makers to act decisively and at the same time to inform the American people as to the importance of obtaining the said interests. In this age of asymmetric warfare, enemies will prey upon the

ability to break the national will by exploiting the current sentiments relating to casualty aversion regarding friendly forces—much like the effect in Somalia after US casualties. Predicating support for military operations on the pretense of casualty free operations only serves to encourage such a strategy. However, the recognition of a proper military ethic, which demands selflessness and integrity as outlined above, surmounts that threat. Professional soldiers are not afraid to fight when called upon, even when the danger is of the gravest sort. Military setbacks are only ruinous to campaign strategy when the interests are not worth fighting and dying for in the first place. When the interests have the requisite import, the loss of some soldiers ought to only strengthen US resolve, at home as well as in the theater of operation, rather than weaken it. The general population is not so casualty averse so as to denounce any operation involving US losses—witness the overwhelming support of the Gulf War despite substantial casualty predictions.

Upon recognizing the disparity of the moral status of innocent noncombatants in contrast with combatants, leaders are also obligated to consider and employ the full array of forces capable of accomplishing a given mission. In doing so, their determination of what forces to use must not rest upon expediency and efficiency but upon balancing those needs with the moral requirement to reduce risk to innocents. Unfortunately, aerospace power in isolation does not provide the capabilities to adequately satisfy the claims of morality with regard to reducing risk to innocents, at least not yet. When technology advances to the point that munitions have the same powers of discrimination as a soldier on the ground, aerospace power may well be sufficient. Until that time, policy makers and strategists cannot continue to believe in light of just war theory that aerospace power alone is a viable option; rather, jointly packaged forces from all services must be employed even when it entails more risk

and associated costs.

Leaders must also realize that not every center of gravity, critical capability or critical requirement translates into a strategic target, even if its destruction facilitates the war effort. For those that do, the considerations of targeting and weaponry must extend beyond the realm of aerospace platforms. The use of ground forces and the associated effects must be similarly weighed when considering strategic targets. In essence, the doctrine of strategic attack must become more robust and inclusive of other services else it will always be in jeopardy of moral inadequacy. Though riskier in the force protection sense than using precision guided munitions, the use of special operations or air assault forces might present significantly less risk to innocents in certain strategic attack situations with foreseen collateral damage, and hence be the morally preferable choice. In other words, leaders must realize that legal sufficiency does not necessitate moral goodness.

It is not clear that philosophers can develop more restrictive or definitive rules and principles than Walzer's DDE regarding conduct in war. Too often, one looks for a prescriptive methodology regarding morality that promises to delineate day from night in the moral twilight. Such efforts are self-defeating; morality is not an exact science. What is required is not more prescription but leaders imbued with the virtues established in the professional military ethic. Properly developed notions of the core values, particularly selfless service and integrity, are what will clarify the gray areas and guide the combatant's conduct.<sup>33</sup> Integrity demands not the obtaining of an end, but the rightness of the means. Integrity thus precludes foreseeable deaths as accidental and unintended, because it demands right action regardless of the consequences involved. Integrity also entails selflessness in soldiers since fulfilling their moral obligations inherently shifts risk onto themselves. Such

must be the nature of the true military professional. Thus, if we cannot prosecute a war justly, then the war should not be fought. To do otherwise is a compromise of integrity and directly contradicts the very reasons for fighting.

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<sup>1</sup> Joint Publication 3-0, *Doctrine for Joint Operations*, February 1995, GL-4.

<sup>2</sup> See John Warden's "The Enemy as a System," *Airpower Review*, Spring, 1995.

<sup>3</sup> Sun Tzu, *The Art of War*, Shambhala Press, Boston, 1988, 66-67.

<sup>4</sup> See Paul Christopher, *The Ethics of War and Peace*, Prentice Hall, Upper Saddle River, 1994. Christopher embraces invincible ignorance and argues that from it, soldiers always have a professional obligation to fight in war. I believe this mistaken. Soldiers may have deep moral objections to a war they consider unjust. Morality ought not force them to act against such convictions since their professional obligations were most likely undertaken only with the assumption that the goals of the profession were not contradictory with personal beliefs.

<sup>5</sup> Since there is no higher authority, the domestic analogy between citizen and state no longer applies. Thus, force is the recourse necessitated.

<sup>6</sup> The line does get blurred at the highest echelons where military leaders do influence national policy. For my purposes though, I will ignore such cases.

<sup>7</sup> This counterintuitive position was raised by prosecutors at the Nuremberg trials but subsequently rejected. Thus, ordinary German soldiers were not held responsible for *jus ad bellum* transgressions committed by Nazi leaders.

<sup>8</sup> *Manual for Courts-Martial United States*, 1994.

<sup>9</sup> See Judith Jarvis Thompson, *The Realm of Rights*, Harvard University, Cambridge, 1990, 285.

<sup>10</sup> *Ibid*, 283.

<sup>11</sup> For an excellent defense of this claim, see Judith Jarvis Thompson, *The Realm of Rights*.

<sup>12</sup> By friendly noncombatants, I simply mean those citizens belonging to the combatant's state (or ally). This is in contrast to enemy noncombatants who are the citizens belonging to the enemy state. The terms do not imply friendly or hostile intentions.

<sup>13</sup> Both the US Army and the US Air Force have Selfless Service as one of their core values. The Navy does not. Its core values include only Honor, Courage, and Commitment. However, the Navy's conception of courage embodies selfless service, as it requires "making decisions in the best interest of the Navy and the nation, without regard to personal consequences." For a more complete discussion of the Navy core values, see <http://www.chinfo.navy.mil/navpalib/traditions/html/corvalu.html>; Internet.

<sup>14</sup> See Immanuel Kant's Formula of Humanity for a discussion of the immorality of people used solely as means, in *Groundwork of the Metaphysic of Morals*, trans H.J. Paton, Harper and Row, New York, 1964.

<sup>15</sup> I borrow the term "well-ordered" from John Rawls, *A Theory of Justice*, Harvard University, Cambridge, 1971. A well-ordered state is one designed to advance the good of its

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members and effectively regulate a public conception of justice, which includes and protects basic human rights.

<sup>16</sup> See the *National Security Strategy of the United States*, 1998.

<sup>17</sup> See Michael Walzer, *Just and Unjust Wars*, Basic Books, 1977, page 146, for a discussion of this point.

<sup>18</sup> Hence, my future unspecified uses of the term noncombatant refer to the innocent rather than non-innocent ones.

<sup>19</sup> Walzer, 153-155. Walzer improves the doctrine with the addition of his revised third tenet, which I have incorporated verbatim.

<sup>20</sup> Ibid, 153. Walzer contends that only the third clause carries the burden.

<sup>21</sup> See "Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia," accessed 20 March 2001; available from <http://www.un.org/icty/pressreal/nato061300.htm>; Internet, 13, for a discussion concerning relative values.

<sup>22</sup> See "Final Report," 18-21, for a discussion of the incident.

<sup>23</sup> The estimate of 10-17 deaths comes from the "Final Report." For the Serbian claim of 16 see "Official report of NATO destruction," accessed 20 March 2001; available from <http://www.canadianserbs.com/destruction/list.htm>; Internet.

<sup>24</sup> "Final Report," 18-19.

<sup>25</sup> See "Official report of NATO destruction," for the Serbian position.

<sup>26</sup> "Final Report," 20.

<sup>27</sup> Ibid, 21.

<sup>28</sup> See *Consequentialism and its Critics*, edited by Samuel Scheffler, Oxford University, Oxford, 1988, for a comprehensive discussion of consequentialism.

<sup>29</sup> "Final Report," 21.

<sup>30</sup> See Plato, *The Republic*, Penguin, London, 1955, 359 for a discussion of the myth of Gyges and Socrates' advancement of the argument I present here.

<sup>31</sup> See Elizabeth Anscombe, "War and Murder" in *Nuclear Weapons: A Catholic Response*, edited by Walter Stein, Merlin, 1961, for this example.

<sup>32</sup> Ibid, 60.

<sup>33</sup> The Navy does not hold integrity as a core value. Rather, honor demands "an uncompromising code of integrity." See note 13.